

REMARKS/ARGUMENTS:

Claims 1, 5, 21, and 25 are amended. Support for the amendments to claims 1 and 25 can be found at page 8, line 31-33 of the Applicant's specification. Claims 1, 2, 4-10, and 21-30 are pending in the application. Reexamination and reconsideration of the application, as amended, are respectfully requested.

DOUBLE PATENTING:

Claims 1, 2, 4, and 21-24 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6, 20, 25, and 35 of U.S. Patent No. 6,627,156. In response, the Applicant files concurrently herewith a terminal disclaimer in compliance with 37 CFR 1.321(c), disclaiming the terminal part of a patent granted on this application, which would extend beyond the expiration date of the full statutory term of U.S. Patent No. 6,627,156 as presently shortened by any terminal disclaimer. Withdrawal of these rejections is thus respectfully requested.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102:

Claims 1, 3, 4, 21, 22, and 24 stand rejected under 35 U.S.C. 102(e) as being anticipated by Pottorff (U.S. Patent No. 6,148,710). The Applicant believes this is a typographical error and the list of claims being rejected should read "1, 2, 4, 21, 22, and 24," since claim 2 is listed on the Office Action Summary sheet and claim 3 had been previously canceled. Therefore, the Applicant will proceed as though claim 2 is rejected. The Applicant respectfully traverses this rejection.

Claim 1, as amended, is as follows:

An apparatus for piercing container caps, comprising:

- a) a piercing blade having a longitudinal axis and a zigzagged cross-section that is perpendicular to said axis;
 - b) an alignment arm for moving said blade in a linear motion along said longitudinal axis to pierce a cap on a container, comprising a carriage assembly for moving said alignment arm, wherein movement of said blade is limited to linear motion along said longitudinal axis, wherein said zig-zagged cross-section produces a Z-shaped cut on said cap; and
- means for driving said carriage assembly.

Pottorff cannot anticipate claim 1 because Pottorff fails to teach that the zig-zagged cross-section produces a Z-shaped cut on a cap. Claim 1 was amended to clarify the difference between the non circular piercing blade of the present invention and the circular hole punch device of Pottorff.

Pottorff cannot render claim 1 obvious because Pottorff fails to teach or suggest that the zig-zagged cross-section produces a Z-shaped cut on a cap. On the contrary, the hole punch of Pottorff has a hollow circular barrel portion and a ring of triangular cutting teeth at its bottom end. (Pottorff, column 3, lines 40-41). Consequently, when the hole punch enters a cap, a circular shape is formed. In the present invention, the Z-shaped pattern continues along the longitudinal axis of the blade. It is an aspect of the present invention that the Z-shaped cut pattern made by the Z-shaped blade vents better for improved clot detection and sample aspiration. The Z-shaped blade of the present invention cuts through the tube caps more easily and with less stretching of the elastomer, resulting in more consistent cut size and better venting. (Applicant's specification, at page 9, lines 3-6).

It is a further aspect of the present invention that the lubed piercing blade with a Z-shaped cross-section can reduce the amount of vertical force required to pierce a thick cap or stopper, which prevents jamming the cap or stopper into the sample container, and also reduces the retraction force required to strip the cap or stopper from the piercing blades. The Z-shaped cut made by the new blades allows adequate ventilation during sample probe entry, so that obstruction detection and sample aspiration meet the system requirements. (Applicant's specification, at page 8, lines 27-33).

In light of the foregoing, Applicant respectfully submits that Pottorff could not have anticipated or rendered obvious claim 1, because Pottorff fails to teach or suggest each and every claim limitation. Claims 2 and 4 depend from claim 1 and cannot be anticipated or rendered obvious for at least the same reasons as claim 1. Withdrawal of these rejections is thus respectfully requested.

Claims 21, 22, and 24, likewise, have the limitation that the zig-zagged cross-section produces a Z-shaped cut on a cap. Therefore, these claims are patentable over Pottorff for the same reasons discussed above. Withdrawal of these rejections is thus respectfully requested.

ALLOWABLE SUBJECT MATTER:

The Examiner objected to claims 5-10 and 25-30 as being dependent upon a rejected base claim, but states that these claims "would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims." In response, the Applicant rewrote claims 5 and 25 as independent claims. Claims 6-10 and 26-30 depend from claims 5 and 25, respectively. Withdrawal of these objections and allowance of claims 5-10 and 25-30 is thus respectfully requested.

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The art made of record but not relied upon by the Examiner has been considered. However, it is submitted that this art neither describes nor suggests the presently claimed invention.

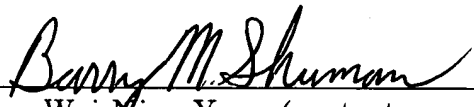
In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. Reexamination and reconsideration of the application, as amended, are requested.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles, California telephone number (310) 789-5108 to discuss the steps necessary for placing the application in condition for allowance.

If there are any fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-1314.

Respectfully submitted,
HOGAN & HARTSON L.L.P.

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